

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 10-CR-0230 (PJS/FLN)

Plaintiff,

v.

ORDER

CESAR SEVILLA-ACOSTA,

Defendant.

Cesar Sevilla-Acosta, pro se.

A jury found Cesar Sevilla-Acosta guilty of conspiring to distribute marijuana, and the Court sentenced him to 135 months' imprisonment. This matter is before the Court on Sevilla's motion for "discovery." ECF No. 1001. Sevilla makes several requests for transcripts and materials relating to communications with his lawyer and the government regarding plea negotiations so that he may prepare a motion to attack his sentence collaterally under 28 U.S.C. § 2255. Sevilla says he wants to bring a claim of ineffective assistance of counsel regarding his lawyer's failure to file "appropriate motions."

In asking for discovery before filing a § 2255 motion, Sevilla has put the cart before the horse. The Court has no authority to grant "discovery" unless and until there is a pending lawsuit. *See United States v. Gleason*, 753 F.2d 83, 85 (8th Cir. 1985). Only *after* Sevilla files a § 2255 motion may he seek discovery, which will be available to him if he shows "good cause." Rule 6(a) Governing Section 2255 Proceedings for the United States District Courts; *Smith v. United States*, 618 F.2d 507, 509 (8th Cir. 1980). A § 2255 movant may also, on certification by a court, request transcripts at the government's expense under 28 U.S.C. § 753(f). But such a

request before the filing of a § 2255 motion is “premature.” *Chapman v. United States*, 55 F.3d 390 (8th Cir. 1995); *United States v. Losing*, 601 F.2d 351 (8th Cir. 1979).

Because Sevilla has not yet filed a § 2255 motion, the Court does not have authority to consider his discovery requests.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court
DISMISSES FOR LACK OF JURISDICTION Sevilla’s discovery motion [ECF No. 1001].

Dated: December 3, 2014

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge